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BAIRAM MURALIDHAR v. STATE OF ANDHRA PRADESH

SUPREME COURT, INDIA
(2014) 10 SUPREME COURT CASES 124
DIPAK MISRA J
PINAKI CHANDRA GHOSE J
B
[CRIMINAL APPEAL NO. 1587 OF 2014†]
31 JULY 2014

CRIMINAL PROCEDURE: *Criminal Procedure Code, 1973 – S. 321 – Withdrawal of prosecution – Corruption case – Public Prosecutor seeking*
C *withdrawal of prosecution only on the ground that State Government has issued order to withdraw the prosecution – Non-application of independent mind by Public Prosecutor – Impermissibility – Held, Special Judge and High Court rightly declined to grant consent – Application must indicate perusal of the materials by stating what are the materials Prosecutor has perused, may be in brief, and whether such*
D *withdrawal of prosecution would serve public interest and how he has formed his independent opinion – Here Public Prosecutor has been totally guided by order of the Government and really not applied his mind to facts of the case – Noteworthy that State Government had granted sanction and anti-Corruption Bureau also found no justification for the withdrawal – Regard being had to gravity of the offence and*
E *the impact on public life apart from the nature of application filed by the Public Prosecutor, view expressed by trial Judge and High Court, upheld – Prevention of Corruption Act, 1988 – Ss. 7 and 13(1)(d) r/w S. 13(2)*

CRIMINAL PROCEDURE: *Criminal Procedure Code, 1973 – S. 321 – Withdrawal from prosecution – Role of Prosecutor and duty of court granting*
F *consent – How to be exercised – Held, it is the obligation of the Public Prosecutor to state what material he has considered – It has to be set out in brief – Public Prosecutor cannot act like the post office on behalf of the State Government, he is required to act in good faith, peruse materials on record and form an independent opinion that withdrawal of the case would really subserve public interest – An order*
G *of the Government on the Public Prosecutor in this regard is not binding – A court while giving consent under S. 321 is required to exercise its judicial discretion, which is not to be exercised in a mechanical manner – Court must consider the material on record to see that the application had been filed in good faith and it is in interests of the public and justice*

H Dismissing the appeal, the Supreme Court

Held:

It is the obligation of the Public Prosecutor to state what material he has considered. It has to be set out in brief. The court is required to give an informed consent. It is obligatory on the part of the court to satisfy itself that
I from the material it can reasonably be held that the withdrawal of the

† Arising out of SLP (Crl.) No. 1487 of 2012. From the Judgment and Order dated 8-12-2011 of the High Court of Judicature of Andhra Pradesh at Hyderabad in Crl. Petition No. 1125 of 2010

prosecution would serve the public interest. It is not within the domain of the court to weigh the material. However, it is necessary on the part of the court to see whether the grant of consent would thwart or stifle the course of law or cause manifest injustice. A court while giving consent under Section 321 of the Code is required to exercise its judicial discretion, which is not to be exercised in a mechanical manner. The court cannot give such consent on a mere asking. It is expected of the court to consider the material on record to see that the application had been filed in good faith and it is in the interest of public interest and justice. Another aspect the court is obliged to see is whether such withdrawal would advance the cause of justice. It requires exercise of careful and concerned discretion because certain crimes are against the State and the society as a collective demands justice to be done. That maintains the law and order situation in the society. The Public Prosecutor cannot act like the post office on behalf of the State Government. He is required to act in good faith, peruse the materials on record and form an independent opinion that the withdrawal of the case would really subserve the public interest at large. An order of the Government on the Public Prosecutor in this regard is not binding. He cannot remain oblivious to his lawful obligations under the Code. He is required to constantly remember his duty to the court as well as his duty to the collective. (Para 18)

Subramanian Swamy v. CBI, (2014) 8 SCC 682 : (2014) 6 SCC (Cri) 42 : (2014) 3 SCC (L&S) 36
Sheonandan Paswan v. State of Bihar, (1987) 1 SCC 288 : 1987 SCC (Cri) 82
Abdul Karim v. State of Karnataka, (2000) 8 SCC 710 : 2001 SCC (Cri) 59
Rahul Agarwal v. Rakesh Jain, (2005) 2 SCC 377 : 2005 SCC (Cri) 506
R.M. Tewari v. State (NCT of Delhi), (1996) 2 SCC 610 : 1996 SCC (Cri) 361, followed

Bansi Lal v. Chandan Lal, (1976) 1 SCC 421 : 1976 SCC (Cri) 39
Balwant Singh v. State of Bihar, (1977) 4 SCC 448 : 1977 SCC (Cri) 633
Subhash Chander v. State (Chandigarh Admn.), (1980) 2 SCC 155 : 1980 SCC (Cri) 376
Rajender Kumar Jain v. State, (1980) 3 SCC 435 : 1980 SCC (Cri) 757
State of Bihar v. Ram Naresh Pandey, 1957 Cri LJ 567 : AIR 1957 SC 389
State of Orissa v. Chandrika Mohapatra, (1976) 4 SCC 250 : 1976 SCC (Cri) 584, considered

Name Dasrath v. State of A.P., (2014) 10 SCC 395, distinguished on facts

In the order passed by the State Government, the State Government has given its opinion why the case is required to be withdrawn. The Public Prosecutor in his application for withdrawal of the prosecution has referred to the government order and sought permission of the Court. What the Public Prosecutor has stated is that he has perused the government order, the material evidence available on record and has applied his mind independently and satisfied that it was a fit case for withdrawal. The central question is whether the Public Prosecutor has really applied his mind to all the relevant materials on record and satisfied himself that the withdrawal

A from the prosecution would subserve the cause of public interest or not. In the case at hand, as the application filed by the Public Prosecutor would show that he had mechanically stated about the conditions precedent, it cannot be construed that he has really perused the materials and applied his independent mind solely because he has so stated. The application must
B indicate perusal of the materials by stating what are the materials he has perused, may be in brief, and whether such withdrawal of the prosecution would serve public interest and how he has formed his independent opinion. Here the Public Prosecutor has been totally guided by the order of the Government and really not applied his mind to the facts of the case. The trial
C Judge and the High Court has observed that it is a case under the Prevention of Corruption Act. They have taken note of the fact that the State Government had already granted sanction. It is also noticeable that the Anti-Corruption Bureau has found there was no justification of withdrawal of the prosecution. (Paras 17 and 19)

D In the case at hand, regard being had to the gravity of the offence and the impact on public life apart from the nature of application filed by the Public Prosecutor, the view expressed by the trial Judge as well as the High Court cannot be found fault with. There is no ground to show that such withdrawal would advance the cause of justice and serve the public interest. That apart,
E there was no independent application of mind on the part of the Public Prosecutor, possibly thinking that the court would pass an order on a mere asking. (Para 22)

Subramanian Swamy v. CBI, (2014) 8 SCC 682 : (2014) 6 SCC (Cri) 42 : (2014) 3 SCC (L&S) 36

F *Sheonandan Paswan v. State of Bihar, (1987) 1 SCC 288 : 1987 SCC (Cri) 82*

Abdul Karim v. State of Karnataka, (2000) 8 SCC 710 : 2001 SCC (Cri) 59, followed

Bairam Muralidhar v. State of A.P., Criminal Petition No. 1125 of 2010, order dated 8-12-2011 (AP), affirmed

Niranjan Hemchandra Sashittal v. State of Maharashtra, (2013) 4 SCC 642 : (2013) 2 SCC (Cri) 737 : (2013) 2 SCC (L&S) 187, considered

G *Name Dasrath v. State of A.P., (2014) 10 SCC 395, distinguished on facts*

B-M/53719/CR

Advocates who appeared in this case:

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For the respondent - A.T.M. Rangaramanujam, Senior Advocate (D. Mahesh Babu, Ms Suchitra Hrangkhawl, Amjid Maqbool, Amit K. Nain, Aditya Jain, Ramakrishna
H *Rao & P.V. Bhaskar Reddy, Advocates)*

Chronological list of cases cited:

Name Dasrath v. State of A.P., (2014) 10 SCC 395

Subramanian Swamy v. CBI, (2014) 8 SCC 682 : (2014) 6 SCC (Cri) 42 : (2014) 3 SCC (L&S) 36

I *Niranjan Hemchandra Sashittal v. State of Maharashtra*, (2013) 4 SCC 642 : (2013) 2 SCC (Cri) 737 : (2013) 2 SCC (L&S) 187

Bairam Muralidhar v. State of A.P., Criminal Petition No. 1125 of 2010, order dated 8-12-2011 (AP)

Rahul Agarwal v. Rakesh Jain, (2005) 2 SCC 377 : 2005 SCC (Cri) 506
Abdul Karim v. State of Karnataka, (2000) 8 SCC 710 : 2001 SCC (Cri) 59
R.M. Tewari v. State (NCT of Delhi), (1996) 2 SCC 610 : 1996 SCC (Cri) 361
Sheonandan Paswan v. State of Bihar, (1987) 1 SCC 288 : 1987 SCC (Cri) 82
Rajender Kumar Jain v. State, (1980) 3 SCC 435 : 1980 SCC (Cri) 757
Subhash Chander v. State (Chandigarh Admn.), (1980) 2 SCC 155 : 1980 SCC (Cri) 376
Balwant Singh v. State of Bihar, (1977) 4 SCC 448 : 1977 SCC (Cri) 633
State of Orissa v. Chandrika Mohapatra, (1976) 4 SCC 250 : 1976 SCC (Cri) 584
Bansi Lal v. Chandan Lal, (1976) 1 SCC 421 : 1976 SCC (Cri) 39
State of Bihar v. Ram Naresh Pandey, 1957 Cri LJ 567 : AIR 1957 SC 389

JUDGMENT

Dipak Misra J:

[1] Leave granted. In this appeal, by special leave, the assail is to the defensibility of the order dated 8-12-2011 passed by the High Court of Judicature of Andhra Pradesh at Hyderabad in *Bairam Muralidhar v. State of A.P.*[1] whereby the learned Single Judge has concurred with the view expressed by the Principal Special Judge for SPE and ACB Cases, City Civil Court, Hyderabad in Crl. Petition No. 994 of 2009 in CC No. 24 of 2007, whereunder the learned trial Judge had declined to grant permission to withdraw the case pending against the appellant-accused in exercise of the power under Section 321 of the Code of Criminal Procedure (for short "the Code").

[2] The expose of facts are that the appellant was arrayed as an accused for offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for brevity "the Act"). As per the prosecution case the son of one Ranga Dharma Goud fell in love with his neighbour's daughter and both of them eloped on 25-1-2006. The neighbour, Radhakrishna Murthy, lodged an FIR at Kamareddy Town Police Station which was registered as Criminal Case No. 21 of 2006 under Section 366-A of the Penal Code, 1860 (IPC). The Sub-Inspector of the police station took up the investigation and arrested the son of Ranga Dharma Goud who suffered judicial custody. When all these things happened Ranga Dharma Goud who was working as a driver in Dubai came to India and he was asked to come to the police station on 22-4-2006 and again on 26-4-2006 on which dates the investigating officer demanded a sum of Rs 6000 to be paid for not implicating him in the said kidnapping case and also to file the charge-sheet against his son by reducing the gravity of the charge. As Ranga Dharma Goud expressed his inability to pay the amount the investigating officer reduced the demand to Rs 5000. Expressing his unwillingness to pay, he approached the DSP, ADB, Nizamabad Range, who after due verifications, registered a case in Cr. No. 4/ACB/NZB/2006 on 4-5-2006 under Sections 7 and 13(1)(d)

1. Criminal Petition No. 1125 of 2010, order dated 8-12-2011 (AP)

read with Section 13(2) of the Act. On the basis of the registration of the FIR the trap was laid and eventually charge-sheet was placed against the accused officer before the competent court.

[3] When the case came up for hearing on the charge the Public Prosecutor filed a petition on 22-6-2009 to withdraw the case against the accused officer on the ground that the Government of A.P. had issued GOMs No. 268 of Home (SC-A) Department, dated 23-5-2009, to withdraw the prosecution against the accused officer. The learned trial Judge referred to the copy of GOMs No. 268 that was annexed to the petition of the Special Public Prosecutor wherein it was mentioned that on due examination the Government had found, regard being had to the good work of the accused in the anti-extremist field and other meritorious service, his case be placed before the Administrative Tribunal for disciplinary proceedings after withdrawal of the prosecution pending in the Court of Special Judge. The learned trial Judge referred to various authorities, adverted to the role and duty of the Public Prosecutor and the role of the court under Section 321 of the Code, and further taking note of the nature of the case and grant of sanction by the State Government to prosecute the case opined that the Public Prosecutor really had not applied his independent mind except filing the petition with copy of GOMs issued by the State Government; that there were no sufficient grounds or circumstances for the court to accept the withdrawal of the prosecution case against the officer; and that there was no justification to allow such an application regard being had to the offences against the accused persons, and accordingly, dismissed the petition.

[4] As the permission was not granted by the learned trial Judge the appellant invoked the jurisdiction of the High Court under Section 482 of the Code before the High Court and the learned Single Judge after adverting to the facts and the reasons ascribed by the learned trial Judge came to hold that the order passed by the learned trial Judge was absolutely impeccable inasmuch as the Public Prosecutor had actually not given any valid reason for withdrawal of the case and further, the case, in the obtaining factual matrix, did not warrant withdrawal under Section 321 of the Code.

[5] We have heard Ms Madhurima Tatia, learned counsel for the petitioner and Mr A.T.M. Rangaramanujam, learned Senior Counsel for the State.

[6] The seminal question that arises for consideration is whether in the obtaining factual score the court was justified to decline permission under Section 321 of the Code for withdrawal of the case. To appreciate the controversy in proper perspective, it is condign to refer the government order whereby a decision has been taken to withdraw the case. The relevant part of it reads as follows:

> 2. In the reference third read above, Shri Bairam Muralidhar, Sub-Inspector of Police, has submitted a representation wherein he has stated that a trap was laid on him on 5-5-2006 by the Deputy Superintendent of

Police, Anti-Corruption Bureau, Nizamabad Range, Nizamabad, along with his staff on a false and frivolous complaint lodged by the complainant by name Shri Ranga Dharma Goud of Kamareddy, Nizamabad District. Actually, a case in Cr. No. 21 of 2006 under Section 366-A, Penal Code was registered in Town Police Station of Kamareddy on 1-2-2006 against Naresh Goud, son of the complainant. A charge-sheet was also filed by him in the Court of the Judicial Magistrate First Class, Kamareddy, against Naresh Goud on 20-3-2006 itself, and the same was numbered vide PRC No. 27 of 2006. Thus, there was no official favour that was to be done to the complainant or his son in this case as alleged. The complainant himself persuaded him to accept the bribe. When he refused to accept, the complainant forcibly thrust some currency notes into his left side shirt pocket. When he resisted the said acts of the complainant for the unprecedented act, the Anti-Corruption Bureau officials rushed to the spot and conducted trap proceedings on him without heeding to his requests. He further informed that he is discharging his legitimate duties and his case was considered for accelerated promotion from Sub-Inspector of Police for his contribution in the anti-extremist work. His services were recognised by way of awarding Police Katina Seva Pathakam in 2005 and his name was also recommended for prestigious Indian Police Medal for Gallantry for the year 2003. Hence, keeping in view his previous record, he requested the Government to consider his request for withdrawal of prosecution and also to reinstate him in service.

3. In the reference fourth read above, the Director General, Anti-Corruption Bureau, Andhra Pradesh, Hyderabad, while rebutting the contentions of the accused officer has stated that there are no merits in the application filed by the applicant and it is not maintainable and as such requested the Government to dismiss the application filed by the accused officer Shri B. Muralidhar, Sub-Inspector of Police.

4. The Government has examined the matter in detail, keeping in view his good work in the anti-extremist field and other meritorious service and order that the case of Shri Bairam Muralidhar, Sub-Inspector of Police, Kamareddy Town Police Station, Nizamabad, be placed before the Tribunal for disciplinary proceedings, duly withdrawing the prosecution in CC No. 24 of 2007 ...

[7] The application for withdrawal that was filed by the learned Public Prosecutor deserves to be referred to. After narrating the factual matrix about the case, while seeking withdrawal the following grounds were put forth:

It is further submitted that as the matter stood thus, the Government has reviewed the case and decided to modify the orders issued in GOMs No. 06, Home (SC-A) Department, dated 10-1-2007 and placed the respondent-accused officer on his defence before the Tribunal for disciplinary proceedings and issued GOMs No. 268, Home (SC-A) Department, dated 23-5-2009, the said GO is filed along with the petition for consideration.

A I respectfully submit that on perusal of the government order and the material evidence available on record and on application of the mind independently and for the reasons accorded by the Government I am satisfied that the case is fit for withdrawal from prosecution in accordance with the settled principles of law as laid down by the Hon'ble Supreme Court of India.

B Therefore, under the abovesaid circumstances it is prayed that this Hon'ble Court may be pleased to permit me to withdraw the case of the prosecution against the respondent-accused officer Shri Bairam Muralidhar and the same may be treated as withdrawn and the respondent-accused officer may be discharged in the interest of justice C and equity.

[8] The learned counsel for the petitioner submitted that in a similar case in *Name Dasrath v. State of A.P.*[2] decided on 31-1-2014, this Court after reproducing paras 76-79 of the Constitution Bench decision in *Sheonandan Paswan v. State of Bihar*[3] had quashed the prosecution and remanded the D matter. The operative part of the said order reads as follows:

> We accordingly allow the appeal, set aside the order of the trial court and the impugned order of the High Court and remand the matter to the trial court for fresh consideration of the petition for withdrawal of prosecution against the appellant under Section 321 CrPC in the light of the E judgments of this Court and in particular the majority judgments of the Constitution Bench of this Court in *Sheonandan Paswan v. State of Bihar*[3] quoted above.

[9] In *Name Dasrath* case[2],9 as we notice, an application was preferred for withdrawal of the case where charge-sheet had already been filed under F Section 13(2) read with Section 13(1)(e) of the Act and the Principal Special Judge for SPE and ACB had declined to grant the prayer and the High Court had refused to entertain the criminal revision. This Court observed that the trial court as well as the High Court have not correctly appreciated the law laid down in *Sheonandan Paswan* case[3] and accordingly passed the order G which we have reproduced hereinbefore.

[10] We have already referred to the facts of the case, reproduced the government order and the application filed by the Public Prosecutor. Before we express our opinion with regard to legal sustainability of the order passed by the learned trial Judge, we think it apposite to refer to certain authorities H pertaining to the role of the Public Prosecutor and the duty of the court as envisaged under Section 321 of the Code.

[11] The Constitution Bench in *Sheonandan Paswan* case[3] referred to Section 333 of the old Code and taking note of the language employed under Section 321 of the present Code opined thus: (SCC pp. 351-52, paras 76-79)

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2. (2014) 10 SCC 395
3. (1987) 1 SCC 288 : 1987 SCC (Cri) 82 : AIR 1987 SC 877

76. … A harmonious view should, in my view, prevail in the reading of the two sections. Section 333 does not give any discretion or choice to the High Court when a motion is made under it. Such being the case, Section 321 must also be construed as conferring powers within circumscribed limits to the court to refuse to grant permission to the Public Prosecutor to withdraw the prosecution. If such a harmonious view is not taken it would then lead to the anomalous position that while under Section 333, a High Court has to yield helplessly to the representation of the Advocate General and stop the proceedings and discharge or acquit the accused, the subordinate courts when moved under Section 321 CrPC would have a power to refuse to give consent for withdrawal of the prosecution if it is of opinion that the case did not suffer from paucity of evidence. The legislature would not have intended to confer greater powers on the subordinate courts than on the High Court in the exercise of powers under Section 494 of the old Code and Section 333 respectively. It would, therefore, be just and reasonable to hold that while conferring powers upon the subordinate courts under Section 494 to give consent to a Public Prosecutor withdrawing the prosecution, the legislature had only intended that the courts should perform a supervisory function and not an adjudicatory function in the legal sense of the term.

77. Section 321 reads as follows:

> 321. Withdrawal from prosecution. — The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the court at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and, upon such withdrawal —
>
> (a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;
>
> (b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences.
>
> (Proviso omitted)

This section enables the Public Prosecutor, in charge of the case to withdraw from the prosecution of any person at any time before the judgment is pronounced, but this application for withdrawal has to get the consent of the court and if the court gives consent for such withdrawal the accused will be discharged if no charge has been framed or acquitted if charge has been framed or where no such charge is required to be framed. It clothes the Public Prosecutor to withdraw from the prosecution of any person, accused of an offence, both when no evidence is taken or even if entire evidence has been taken. The outer limit for the exercise of this power is 'at any time before the judgment is pronounced'.

78. The section gives no indication as to the grounds on which the Public Prosecutor may make the application, or the considerations on which the court is to grant its consent. The initiative is that of the Public Prosecutor and what the court has to do is only to give its consent and not to

A determine any matter judicially. The judicial function implicit in the exercise of the judicial discretion for granting the consent would normally mean that the court has to satisfy itself that the executive function of the Public Prosecutor has not been improperly exercised, or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes.

B

79. The court's function is to give consent. This section does not obligate the court to record reasons before consent is given. However, I should not be taken to hold that consent of the court is a matter of course. When the Public Prosecutor makes the application for withdrawal after taking into consideration all the materials before him, the court exercises its
C judicial discretion by considering such materials and on such consideration, either gives consent or declines consent. The section should not be construed to mean that the court has to give a detailed reasoned order when it gives consent. If on a reading of the order giving consent, a higher court is satisfied that such consent was given on an overall consideration of the materials available, the order giving consent
D has necessarily to be upheld.

[12] In the said case, the larger Bench referred the decisions in *Bansi Lal v. Chandan Lal*[4], *Balwant Singh v. State of Bihar*[5], *Subhash Chander v. State (Chandigarh Admn.)*[6], *Rajender Kumar Jain v. State*[7], and the principles stated in *State of Bihar v. Ram Naresh Pandey*[8] and eventually came to hold as follows:
E (*Sheonandan Paswan* case[3], SCC pp. 358-59, paras 99-100)

99. All the above decisions have followed the reasoning of *Ram Naresh Pandey* case[8] and the principles settled in that decision were not doubted.

100. It is in the light of these decisions that the case on hand has to be
F considered. I find the application for withdrawal by the Public Prosecutor has been made in good faith after careful consideration of the materials placed before him and the order of consent given by the Magistrate was also after due consideration of various details, as indicated above. It would be improper for this Court, keeping in view the scheme of Section 321, to embark upon a detailed enquiry into the facts and evidence of the
G case or to direct retrial for that would be destructive of the object and intent of the section.

[13] In *R.M. Tewari v. State (NCT of Delhi)*[9] this Court while dealing with justifiability of withdrawal from the prosecution the Court referred to Section 321 of the Code and the principle that has been stated in *Sheonandan*
H *Paswan*[3] and opined that: (*R.M. Tewari* case[9], SCC p. 615, paras 7-8)

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4. (1976) 1 SCC 421 : 1976 SCC (Cri) 39 : AIR 1976 SC 370
5. (1977) 4 SCC 448 : 1977 SCC (Cri) 633 : (1978) 1 SCR 604
6. (1980) 2 SCC 155 : 1980 SCC (Cri) 376 : (1980) 2 SCR 44
I 7. (1980) 3 SCC 435 : 1980 SCC (Cri) 757 : AIR 1980 SC 1510
8. 1957 Cri LJ 567 : AIR 1957 SC 389
9. (1996) 2 SCC 610 : 1996 SCC (Cri) 361
3. *Sheonandan Paswan v. State of Bihar*, (1987) 1 SCC 288 : 1987 SCC (Cri) 82

7. It is, therefore, clear that the Designated Court was right in taking the view that withdrawal from prosecution is not to be permitted mechanically by the court on an application for that purpose made by the Public Prosecutor. It is equally clear that the Public Prosecutor also has not to act mechanically in the discharge of his statutory function under Section 321 CrPC on such a recommendation being made by the Review Committee; and that it is the duty of the Public Prosecutor to satisfy himself that it is a fit case for withdrawal from prosecution before he seeks the consent of the court for that purpose.

8. It appears that in these matters, the Public Prosecutor did not fully appreciate the requirements of Section 321 CrPC and made the applications for withdrawal from prosecution only on the basis of the recommendations of the Review Committee. It was necessary for the Public Prosecutor to satisfy himself in each case that the case is fit for withdrawal from prosecution in accordance with the settled principles indicated in the decisions of this Court and then to satisfy the Designated Court of the existence of a ground which permits withdrawal from prosecution under Section 321 CrPC.

[14] A three-Judge Bench in *Abdul Karim v. State of Karnataka*[10] referred to the Constitution Bench judgment in *Sheonandan Paswan* case[3] and Bharucha, J. (as His Lordship then was) speaking for himself and D.P. Mohapatra, J observed thus: (*Abdul Karim* case[10], SCC p. 729, paras 19-20)

19. The law, therefore, is that though the Government may have ordered, directed or asked a Public Prosecutor to withdraw from a prosecution, *it is for the Public Prosecutor to apply his mind to all the relevant material and, in good faith, to be satisfied thereon that the public interest will be served by his withdrawal from the prosecution. In turn, the court has to be satisfied, after considering all that material, that the Public Prosecutor has applied his mind independently thereto, that the Public Prosecutor, acting in good faith, is of the opinion that his withdrawal from the prosecution is in the public interest, and that such withdrawal will not stifle or thwart the process of law or cause manifest injustice*.

20. It must follow that the application under Section 321 must aver that the Public Prosecutor is, in good faith, satisfied, on consideration of all relevant material, that his withdrawal from the prosecution is in the public interest and it will not stifle or thwart the process of law or cause injustice. *The material that the Public Prosecutor has considered must be set out, briefly but concisely, in the application or in an affidavit annexed to the application or, in a given case, placed before the court, with its permission, in a sealed envelope. The court has to give an informed consent. It must be satisfied that this material can reasonably lead to the conclusion that the withdrawal of the Public Prosecutor from the prosecution will serve the public interest; but it is not for the court to weigh the material*. The court must be satisfied that the Public Prosecutor has considered the material and, in good faith, reached the conclusion that his withdrawal from the prosecution will serve the public interest. The court must also consider whether the grant of consent may thwart or stifle

3. *Sheonandan Paswan v. State of Bihar*, (1987) 1 SCC 288 : 1987 SCC (Cri) 82
10. (2000) 8 SCC 710 : 2001 SCC (Cri) 59 : AIR 2001 SC 116

A the course of law or result in manifest injustice. If, upon such consideration, the court accords consent, it must make such order on the application as will indicate to a higher court that it has done all that the law requires it to do before granting consent. (emphasis supplied)

[15] Y.K. Sabharwal, J. (as His Lordship then was) in his concurring B opinion elaborating further on fundamental parameters which are to be the laser beam for exercise of power under Section 321 of the Code opined that: (*Abdul Karim* case[10], SCC p. 739, paras 42-43)

42. The satisfaction for moving an application under Section 321 CrPC has to be of the Public Prosecutor which in the nature of the case in hand C has to be based on the material provided by the State. The nature of the power to be exercised by the Court while deciding application under Section 321 is delineated by the decision of this Court in *Sheonandan Paswan v. State of Bihar*[3]. *This decision holds that grant of consent by the court is not a matter of course and when such an application is filed by the Public Prosecutor after taking into consideration the material before him, the court exercises* D *its judicial discretion by considering such material and on such consideration either gives consent or declines consent*. It also lays down that the court has to see that the application is made in good faith, in the interest of public policy and justice and not to thwart or stifle the process of law or suffers from such improprieties or illegalities as to cause manifest injustice if consent is given.

E

43. True, *the power of the court under Section 321 is supervisory but that does not mean that while exercising that power, the consent has to be granted on mere asking*. The court has to examine that all relevant aspects have been taken into consideration by the Public Prosecutor and/ or by the Government in exercise of its executive function. (emphasis supplied)

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[16] In *Rahul Agarwal v. Rakesh Jain*[11] the Court was dealing with what should be the lawful consideration while dealing with an application for withdrawal under Section 321 of the Code. The Court referred to the decisions in *Ram Naresh Pandey*[8], *State of Orissa v. Chandrika Mohapatra*[12], *Balwant Singh v. State of Bihar*[5] and the authority in *Abdul Karim*[10] wherein the G earlier decision of the Constitution Bench in *Sheonandan Paswan*[3] was appreciated and after reproducing few passages from *Abdul Karim*[10] ruled that: (*Rahul Agarwal* case[11], SCC pp. 381-82, para 10)

10. From these decisions as well as other decisions on the same question, the law is very clear that the withdrawal of prosecution can be allowed H only in the interest of justice. Even if the Government directs the Public Prosecutor to withdraw the prosecution and an application is filed to that

3. (1987) 1 SCC 288 : 1987 SCC (Cri) 82
5. (1977) 4 SCC 448 : 1977 SCC (Cri) 633
I 8. *State of Bihar v. Ram Naresh Pandey*, 1957 Cri LJ 567 : AIR 1957 SC 389
10. *Abdul Karim v. State of Karnataka*, (2000) 8 SCC 710 : 2001 SCC (Cri) 59
11. (2005) 2 SCC 377 : 2005 SCC (Cri) 506
12. (1976) 4 SCC 250 : 1976 SCC (Cri) 584

effect, *the court must consider all relevant circumstances and find out whether the withdrawal of prosecution would advance the cause of justice*. If the case is likely to end in an acquittal and the continuance of the case is only causing severe harassment to the accused, the court may permit withdrawal of the prosecution. If the withdrawal of prosecution is likely to bury the dispute and bring about harmony between the parties and it would be in the best interest of justice, the court may allow the withdrawal of prosecution. *The discretion under Section 321, Code of Criminal Procedure is to be carefully exercised by the court having due regard to all the relevant facts and shall not be exercised to stifle the prosecution which is being done at the instance of the aggrieved parties or the State for redressing their grievance. Every crime is an offence against the society and if the accused committed an offence, society demands that he should be punished*. Punishing the person who perpetrated the crime is an essential requirement for the maintenance of law and order and peace in the society. Therefore, the withdrawal of the prosecution shall be permitted only when valid reasons are made out for the same. (emphasis supplied)

[17] The obtaining fact situation has to be tested on the anvil of the aforesaid enunciation of law. As is demonstrable, the State Government *vide* GOMs No. 268 dated 23-5-2009 enumerated certain aspects which are reproduced hereinbefore. The reproduction part requires slight clarification. In the order passed by the State Government, the third reference refers to the representation of Shri B. Muralidhar, Sub-Inspector of Police, Kamareddy Town PS dated 5-8-2007 and the fourth reference refers to the communication from the Director General, Anti-Corruption Bureau, Andhra Pradesh, Hyderabad dated 12-10-2007. Thereafter, the State Government has given its opinion why the case is required to be withdrawn. The learned Public Prosecutor in his application for withdrawal of the prosecution has referred to the government order and sought permission of the Court. What the Public Prosecutor has stated is that he has perused the government order, the material evidence available on record and has applied his mind independently and satisfied that it was a fit case for withdrawal.

[18] The central question is whether the Public Prosecutor has really applied his mind to all the relevant materials on record and satisfied himself that the withdrawal from the prosecution would subserve the cause of public interest or not. Be it stated, it is the obligation of the Public Prosecutor to state what material he has considered. It has to be set out in brief. The court as has been held in *Abdul Karim* case[10], is required to give an informed consent. It is obligatory on the part of the court to satisfy itself that from the material it can reasonably be held that the withdrawal of the prosecution would serve the public interest. It is not within the domain of the court to weigh the material. However, it is necessary on the part of the court to see whether the grant of consent would thwart or stifle the course of law or cause manifest injustice. A court while giving consent under Section 321 of the Code is required to exercise its judicial discretion, and judicial discretion, as

10. *Abdul Karim v. State of Karnataka*, (2000) 8 SCC 710 : 2001 SCC (Cri) 59

A settled in law, is not to be exercised in a mechanical manner. The court cannot give such consent on a mere asking. It is expected of the court to consider the material on record to see that the application had been filed in good faith and it is in the interest of public interest and justice. Another aspect the court is obliged to see is whether such withdrawal would advance
B the cause of justice. It requires exercise of careful and concerned discretion because certain crimes are against the State and the society as a collective demands justice to be done. That maintains the law and order situation in the society. The Public Prosecutor cannot act like the post office on behalf of the State Government. He is required to act in good faith, peruse the materials
C on record and form an independent opinion that the withdrawal of the case would really subserve the public interest at large. An order of the Government on the Public Prosecutor in this regard is not binding. He cannot remain oblivious to his lawful obligations under the Code. He is required to constantly remember his duty to the court as well as his duty to the collective.

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[19] In the case at hand, as the application filed by the Public Prosecutor would show that he had mechanically stated about the conditions precedent, it cannot be construed that he has really perused the materials and applied his independent mind solely because he has so stated. The application must
E indicate perusal of the materials by stating what are the materials he has perused, may be in brief, and whether such withdrawal of the prosecution would serve public interest and how he has formed his independent opinion. As we perceive, the learned Public Prosecutor has been totally guided by the order of the Government and really not applied his mind to the facts of the case. The learned trial Judge as well as the High Court has observed that it
F is a case under the Prevention of Corruption Act. They have taken note of the fact that the State Government had already granted sanction. It is also noticeable that the Anti-Corruption Bureau has found there was no justification of withdrawal of the prosecution.

G **[20]** A case under the Prevention of Corruption Act has its own gravity. In *Niranjan Hemchandra Sashittal v. State of Maharashtra*[13] while declining to quash the proceeding under the Act on the ground of delayed trial, the Court observed thus: (SCC p. 654, para. 25)

> 25. In the case at hand, the appellant has been charge-sheeted under the
H Prevention of Corruption Act, 1988 for disproportionate assets. The said Act has a purpose to serve. Parliament intended to eradicate corruption and provide deterrent punishment when criminal culpability is proven. The intendment of the legislature has an immense social relevance. In the present day scenario, corruption has been treated to have the potentiality of corroding the marrows of the economy. There are cases where the
I amount is small and in certain cases, it is extremely high. The gravity of the offence in such a case, in our considered opinion, is not to be adjudged on the bedrock of the quantum of bribe. An attitude to abuse

13. (2013) 4 SCC 642 : (2013) 2 SCC (Cri) 737 : (2013) 2 SCC (L&S) 187

> the official position to extend favour *in lieu* of benefit is a crime against the collective and an anathema to the basic tenets of democracy, for it erodes the faith of the people in the system. It creates an incurable concavity in the rule of law. Be it noted, system of good governance is founded on collective faith in the institutions. If corrosions are allowed to continue by giving allowance to quash the proceedings in corruption cases solely because of delay without scrutinising other relevant factors, a time may come when the unscrupulous people would foster and garner the tendency to pave the path of anarchism.

[21] Recently, in *Subramanian Swamy v. CBI*[14], the Constitution Bench while declaring Section 6-A of the Delhi Special Police Establishment Act, 1946, which was inserted by Act 45 of 2003 as unconstitutional has opined that: (SCC pp. 725-26, para. 59)

> 59. It seems to us that classification which is made in Section 6-A on the basis of status in the government service is not permissible under Article 14 as it defeats the purpose of finding *prima facie* truth into the allegations of graft, which amount to an offence under the PC Act, 1988. Can there be sound differentiation between corrupt public servants based on their status? Surely not, because irrespective of their status or position, corrupt public servants are corrupters of public power. The corrupt public servants, whether high or low, are birds of the same feather and must be confronted with the process of investigation and inquiry equally. Based on the position or status in service, no distinction can be made between public servants against whom there are allegations amounting to an offence under the PC Act, 1988.

And thereafter, the larger Bench further ruled: (SCC p. 726, para. 60)

> 60. Corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the PC Act, 1988. It is difficult to justify the classification which has been made in Section 6-A because the goal of law in the PC Act, 1988 is to meet corruption cases with a very strong hand and all public servants are warned through such a legislative measure that corrupt public servants have to face very serious consequences.

And again, the larger Bench observed: (SCC pp. 730-31, paras. 71-72)

> 71. Office of public power cannot be the workshop of personal gain. The probity in public life is of great importance. How can two public servants against whom there are allegations of corruption or graft or bribe-taking or criminal misconduct under the PC Act, 1988 can be made to be treated differently because one happens to be a junior officer and the other, a senior decision maker.
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> 72. Corruption is an enemy of nation and tracking down corrupt public servant, howsoever high he may be, and punishing such person is a necessary mandate under the PC Act, 1988. The status or position of public servant does not qualify such public servant from exemption from

14. (2014) 8 SCC 682 : (2014) 6 SCC (Cri) 42 : (2014) 3 SCC (L&S) 36

A equal treatment. The decision-making power does not segregate corrupt officers into two classes as they are common crimedoers and have to be tracked down by the same process of inquiry and investigation.

[22] We have referred to these authorities only to show that in the case at hand, regard being had to the gravity of the offence and the impact on public B life apart from the nature of application filed by the Public Prosecutor, we are of the considered opinion that view expressed by the learned trial judge as well as the High Court cannot be found fault with. We say so as we are inclined to think that there is no ground to show that such withdrawal would advance the cause of justice and serve the public interest. That apart, there C was no independent application of mind on the part of the learned Public Prosecutor, possibly thinking that the court would pass an order on a mere asking.

[23] The view expressed in *Name Dasrath* case[2] is not applicable to the case at hand as the two-Judge Bench therein has opined that the law laid down D in *Sheonandan Paswan* case[3] has not been correctly appreciated by the learned trial Judge and the High Court. We have referred to the said authority and the later decisions which are on the basis of *Sheonandan Paswan* case[3] have laid down the principles pertaining to the duty of the Public Prosecutor and the role of the court and we find the view expressed by the trial court and E the High Court is absolutely impregnable and, therefore, the decision in *Name Dasrath*[2] is distinguishable on facts.

[24] In the result, the criminal appeal, being *sans substratum*, is dismissed.

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2. *Name Dasrath v. State of A.P.*, (2014) 10 SCC 395
3. *Sheonandan Paswan v. State of Bihar*, (1987) 1 SCC 288 : 1987 SCC (Cri) 82

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